

# EXHIBIT C

*Excerpt from July 12, 2023 – LUPE v. Nelson Oral Argument*

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

CASE NO.: 22-50775

La Unión del Pueblo Entero; Friendship  
West Baptist Church; Anti-Defamation  
League Austin, Southwest, and Texoma;  
Southwest Voter Registration Education  
Project; Texas Impact; Mexican American  
Bar Association of Texas; Texas Hispanics  
Organized for Political Education; Jolt  
Action; William C. Velasquez Institute;  
James Lewin; Fiel Houston, Incorporated,

Plaintiffs - Appellees

v.

Jane Nelson, in her official capacity  
as Texas Secretary of State, Warren K.  
Paxton, in his official capacity as Attorney  
General of Texas; State of Texas,

Defendants - Appellants

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consolidated with  
No. 22-50777

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Mi Familia Vota; Marla López; Marlon  
López; Paul Rutledge,

Plaintiffs - Appellees

v.

Gregory W. Abbott, In His Official Capacity  
as Governor of Texas; Jane Nelson, in her  
official capacity as Secretary of State of  
Texas; Warren K. Paxton, in his official  
capacity as Attorney General of Texas,

Defendants - Appellants

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Delta Sigma Theta Sorority, Incorporated;  
Houston Area Urban League, The Arc of  
Texas; Jeffrey Lamar Clemmons,

Plaintiffs - Appellees

v.

Gregory Wayne Abbott, In His Official  
Capacity as the Governor of Texas,  
Warren Kenneth Paxton, Jr., In His Official  
Capacity as the Attorney General of Texas,

Defendants - Appellants

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Mi Familia Vota; Marla López; Marlon López;  
Paul Rutledge,

Plaintiffs - Appellees

v.

Greg Abbott, In His Official Capacity  
as Governor of Texas; Jane Nelson, in  
her official capacity as Texas Secretary  
of State; Warren Kenneth Paxton, Jr.,  
in his official capacity as Attorney General  
of Texas,

Defendants - Appellants

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consolidated with  
No. 22-50778

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La Union Del Pueblo Entero, Et al,

Plaintiffs

v.

Gregory W. Abbott, In his Official  
Capacity as Governor of Texas, Et al,

Defendants

OCA-Greater Houston; League of Women  
Voters of Texas; REVUP-Texas; Workers  
Defense Action Fund,

Plaintiffs - Appellees

v.

Jane Nelson, In her official capacity  
as Texas Secretary of State; Ken Paxton,  
Texas Attorney General,

Defendants - Appellants

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Proceedings had and taken place before the United  
States Court of Appeals for the Fifth Circuit Court, at  
600 South Maestri Place, Suite 115, New Orleans,  
Louisiana, 70130 on the 12th day of July 2023,  
commencing at the hour of 9:00 a.m., and being a  
Hearing.

APPEARANCES:

On Behalf of the Plaintiffs/Appellees:

BY: REBECCA MARTIN, ESQUIRE

BY: ADRIEL DERIEUX, ESQUIRE

On Behalf of the Defendant/Appellants:

OFFICE OF THE ATTORNEY GENERAL

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BY: WILLIAM FRANCIS COLE, ESQUIRE

1 Austrawhich, I think is, as I said, the most recent  
2 case, but that was also that argument was also  
3 addressed in Tara and in Richardson.

4 In fact, in Tara, the Court rejected this  
5 exact argument with respect to one of the  
6 provisions they challenge here, namely the section  
7 3.15, which of SB 1, which bars single choice,  
8 ranked voting. So, the promulgation of rules  
9 interpretive guidance assistant, this Court has  
10 made clear again and again that that can't help the  
11 claims. And that is true that applies to several  
12 of their claims that are Article 3, Article 4, and  
13 Article 2 of SB 1.

14 The final category that we have here for the  
15 Secretary is the reporting of violations of law.  
16 Now that doesn't get them there either. Because  
17 merely reporting a violation of law to another  
18 state official or a district attorney does not  
19 constitute enforcement. This Court has said over  
20 and over again that enforcement means compulsion or  
21 constraint. And merely transmitting information to  
22 another state official does not constitute  
23 compulsion or constraint. It doesn't compel or  
24 constrain the Plaintiffs. And that is a problem  
25 for them here.

1       This Court, I think they make some arguments that  
2 there is some sort of, I think the in their  
3 colorful language enforcement matrix. I don't think  
4 that is an accurate description of how Texas law  
5 works here. There isn't an enforcement matrix.  
6 State officials, like district attorneys, and prior  
7 to Stevens, the Attorney General, our  
8 constitutional officers that have an independent  
9 obligation under the Constitution to the Texas  
10 Constitution to make judgments about what cases to  
11 bring. And just because there's a referral of a  
12 potential violation of law, that doesn't mean the  
13 attorney general, or the district attorney is going  
14 to prosecute that case.

15       They have to exercise their judgment about the  
16 facts. And this Court has said, in Texas Democratic  
17 Party v. Hughes, that if a but for cause is not  
18 enough, it's not enough under Young to get them  
19 over the enforcement. And that's all they can say  
20 here. That's all they can say. Is that well,  
21 maybe there's going to be some referral of  
22 information to another state official, and then  
23 that state official is going to enforce it against  
24 us. Again, that's not enough. That's not  
25 enforcement. That's not compulsion and constraint

1 and that can't help them in their claims against the  
2 Secretary.

3 I will turn briefly to the Attorney General.  
4 There are, I think two remaining issues there about  
5 why the Plaintiffs believe the Attorney General  
6 enforces election these 37 provisions of the  
7 election code. That's his investigatory powers,  
8 and the ability under Texas law, Texas law to be  
9 deputized to prosecute other offenses. Now, I'll  
10 take the investigatory bit first.

11 This Court has strongly suggested two weeks  
12 ago in Austrawhich, that investigation is not  
13 enough. And there's good reason for the Court to  
14 have done that. Again, investigation without more  
15 without some sort of subpoena or demand, it doesn't  
16 compel or constrain the Plaintiffs. Indeed, an  
17 investigation would likely be internal. They may  
18 not even know about it. And so, enjoining the  
19 Attorney General from investigating potential  
20 wrongdoing doesn't wouldn't work here. Because  
21 what they're again complaining about is that maybe  
22 the investigation will be passed off to another  
23 state official or local official, and that official  
24 will prosecute some offense. Again, that doesn't  
25 get them there.

1       The second bucket for the Attorney General is the  
2 provision under Texas law for him to be deputized  
3 to assist local prosecutors. And essentially what  
4 Plaintiffs are arguing here is the argument that  
5 was made by the City of Austin and City of Austin  
6 against Paxton. And it is that the Attorney  
7 General has a habit of prosecuting election law  
8 cases he's expressed an interest in election  
9 integrity work. And so that means he has the  
10 demonstrated willingness to enforce it.

11       A couple of problems there. Number one, of  
12 course, is that Ex Parte Xena Stephens case from  
13 the Texas Court of Criminal Appeals, prevents the  
14 Attorney General from now unilaterally prosecuting  
15 election law crimes. And so, the argument is that,  
16 well, maybe there's going to be a deputation from a  
17 district attorney to allow him to prosecute those  
18 crimes. Now, the problem is, of course, that  
19 turned entirely on the potential speculated actions  
20 of unnamed district attorneys. And the other  
21 thing, I would note that is that a deputization,  
22 let's say the assistant attorney general is  
23 deputized. Well, they're acting under the auspices  
24 of the district attorney's authority and we and not  
25 the Attorney General's authority. And I think we

1 can know that because let's say a district attorney  
2 asks for assistance from the Attorney General, he  
3 agrees to prosecute it, help them prosecute it. If  
4 another district attorney comes in because the  
5 current one gets thrown out of office and an  
6 election, surely, they could pull down the  
7 deputation. So, they will be prosecuting it as the  
8 district attorney, not as the Attorney General.  
9 And so, I don't think deputization gets them there.

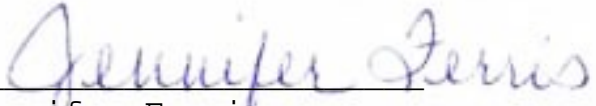
10 That for those reasons, sovereign immunity  
11 bars Plaintiffs complaints, Plaintiffs complaints  
12 under the Section 1983 claims. I see my time is  
13 expiring. I'll just say I'll touch on the standing  
14 piece in the 30 seconds I have left. But for all  
15 the similar reasons we think standing traceability  
16 would be another ground, the Court could go to  
17 resolve this appeal, as we said the Attorney  
18 General doesn't have and the Secretary doesn't have  
19 the requisite connection to the enforcement of the  
20 provisions here. And so that would also do their  
21 claims under the traceability standard of Article 3  
22 of element of Article 3 that in your opinion, just  
23 a couple days ago, Judge Oldham you remarked on so  
24 with that I will, unless there are further  
25 questions, I will sit down.

C E R T I F I C A T E

I, Jennifer Ferris, Legal Transcriptionist, certify that the foregoing is a correct transcription from the audio recording provided to me in connection with the above-entitled matter.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this transcription is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

Certified to by me this 17th day of July 2023.

  
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